

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
MR. MYLES J. GOGER
DBA / JAMES RIVER COUNTRY STORE
UST Facility at 280 Valley Street, Scottsville, VA
Facility Identification No. 6-013904

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and Mr. Myles J. Goger to resolve certain violations of the State Water Control Law and regulations at Mr. Myles J. Goger's Underground Storage Tank Facility located at 280 Valley Street in Scottsville, Albemarle County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. ABoard≡ means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. ACode≡ means the Code of Virginia (1950), as amended.
3. AUST≡ means underground storage tank.
4. "Mr. Goger" means Mr. Myles J. Goger, dba / James River Country Store, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. ADepartment≡ or "DEQ" means the Department of Environmental Quality, an agency of

the Commonwealth of Virginia as described in Code § 10.1-1183.

6. A Director means the Director of the Department of Environmental Quality.
7. A Facility means the retail gasoline station and USTs owned and operated by Mr. Goger located at 280 Valley Street, Scottsville, Albemarle County, Virginia. The Facility's USTs are further identified by UST numbers: 1, 2 & 3.
8. A Order means this document, also known as a Consent Special Order.
9. A Regional Office means the Valley Regional Office of the Department.
10. A Regulation means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Sti-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. "Form 7530" means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-50, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. Goger is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On July 13, 2001, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Testing of the cathodic protection (CP) system installed on the USTs had not been performed in apparent violation of 9 VAC 25-580-90 ¶2.
 - b. Release detection was not being performed on the USTs in apparent violation of 9 VAC 25-580-50 ¶6.

- c. The observation well next to the USTs was not secured in apparent violation of 9 VAC 25-580-160 ¶6. h.
- d. Financial assurance documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-10 *et seq.*

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 01-08-VRO-5) to Mr. Goger on August 10, 2001, for these apparent violations of the Regulations. The letter requested that Mr. Goger respond by August 20, 2001, and included a copy of the formal inspection results, detailing the apparent violations noted above.

- 4. On September 20, 2001, DEQ staff received a handwritten letter from Mr. Goger stating that: a) a contractor would be performing the CP testing in the near future; b) he would begin performing release detection on October 1, 2001; c) he was still considering options for complying with financial assurance requirements; and, d) he had ordered a new cap to secure the observation well.
- 5. On February 15, 2002, DEQ staff sent a Letter of Agreement (LOA) to Mr. Goger which included a requirement to correct all the alleged violations documented in the July 13, 2001, inspection by June 15, 2002. The LOA was not signed or returned to the DEQ.
- 6. On February 21, 2002, DEQ staff conducted a site visit at the facility to review its current compliance status and to assist Mr. Goger in correcting any violations previously noted. During the site visit DEQ staff noted that none of the alleged violations noted in the July 13, 2001, inspection had been corrected. DEQ staff also reviewed release detection options with Mr. Goger and provided him with financial assurance explanation package and a list of contractors that provide release detection and CP testing services.
- 7. On February 25, 2002, Mr. Goger contacted DEQ staff informing us that the cost of installing Automatic Tank Gauges (ATG) for release detection was too expensive and that he would contact some Statistical Inventory Reconciliation (SIR) vendors to determine if it would be a better option for complying with the release detection requirement.
- 8. On February 26 2002, DEQ staff contacted Mr. Goger to inquire about his decision regarding release detection. Mr. Goger explained that he had not contacted any SIR vendors as of that date and that getting daily product level measurements from the USTs would be very difficult (taking daily product level measurements is a requirement for using SIR as a release detection method). Mr. Goger also indicated that he had contacted a contractor to perform the CP testing, but did not have a scheduled date for the testing.

DEQ staff requested that Mr. Goger sign and return the LOA that had been sent to him on February 15, 2002.

9. On March 12, 2002, Mr. Goger verbally advised DEQ staff that he had began having his employees take daily product level measurements, but that had not worked out. He also explained that he had contacted another contractor regarding renting an ATG system for release detection. Mr. Goger stated that he would send the DEQ a letter of intent to comply and a copy of the signed contract for ATG installation once obtained. Mr. Goger also explained the he would perform the required CP testing.
10. On March 14, 2002, DEQ staff received a handwritten letter from Mr. Goger stating that: a) he had contacted a contractor to perform the CP testing; b) a contractor had agreed to lease him an ATG system and another contractor would install the equipment once it had inspected the Facility; and, c) his accountant was working on the financial assurance requirement.
11. On April 12, 2002, DEQ staff contacted Mr. Goger regarding the status of the performance of release detection and CP testing. He stated that neither item had been performed yet.
12. On May 13, 2002, DEQ staff contacted Mr. Goger regarding the status of the performance of release detection and CP testing. Mr. Goger stated that neither item had been completed.
13. On June 11, 2002, DEQ staff received copies of CP testing performed on the USTs at the Facility on May 21, 2002. The CP systems for all USTs passed the test.
14. On August 6, 2002, DEQ staff left a voice-mail message for Mr. Goger requesting that he contact the DEQ. On August 7, 2002, DEQ staff received a voice-mail message from Mr. Goger in which he indicated that the work to install the ATG system for release detection had not been completed.
15. On August 7, 2002, DEQ staff contacted Mr. Goger to inform him of the DEQ's intention to issue a Notice of Violation (NOV) if compliance with the Regulations was not achieved. Mr. Goger stated that compliance with the Regulation was out of his control as the contractor had not inspected his site yet for installation of the ATG system. Mr. Goger stated that he would contact his contractor regarding getting a contract for ATG installation. On this same date, DEQ staff received confirmation that Mr. Goger had complied with the requirements for Financial Assurance.

16. On August 14, 2002, DEQ staff contacted Mr. Goger to confirm DEQ's intention to issue a NOV if compliance with the Regulation was not achieved. Mr. Goger stated that his contractor was scheduled to inspect the facility on August 15, 2002, and would provide him with a bid for ATG installation at that time. Mr. Goger also stated that he would fax DEQ a copy of a signed contract for ATG installation as soon as he had one, which he estimated would be on August 15, 2002. The DEQ did not receive a signed copy of a contract for ATG installation.
17. On August 15, 2002, Mr. Goger advised DEQ staff that the bid presented by his contractor was twelve thousand dollars, (twice what he was expecting), and that he did not have the money to perform the work. DEQ staff reviewed options for complying with release detection requirements with Mr. Goger and he decided that ATG installation was probably his best alternative. Mr. Goger left a voice-mail this same date with DEQ staff stating that he had contacted three other contractors to obtain bids for ATG installation.
18. On August 16, 2002, DEQ staff issued NOV No. 02-8-VRO-3 to Mr. Goger, for the apparent continuing violation of the Regulations 9 VAC 25-580-50 (Performance standards for new USTs systems) on USTs #1, 2 & 3 and for apparent violation of 9 VAC 25-580-160 (Methods of release detection of tanks). The NOV requested that Mr. Goger respond to the Department by August 30, 2002.
19. On August 28, 2002, DEQ staff contacted Mr. Goger to schedule a meeting to discuss possible resolutions to this matter. A meeting was scheduled for September 20, 2002.
20. On September 20, 2002, DEQ staff met with Mr. Goger to discuss possible resolutions for the continuing violations, first noted during the inspection. Mr. Goger informed the DEQ of his financial situation and subsequent difficulty in obtaining a contractor to install his desired method of release detection. DEQ staff offered Mr. Goger the opportunity to apply for an "ability to pay" determination.
21. DEQ staff received Mr. Goger "ability to pay" application on November 6, 2002. On December 4, 2002, DEQ staff determined that Mr. Goger qualified for an inability to pay certification.
22. On December 18, 2002, Mr. Goger informed DEQ staff that his UST contractor was on site installing the equipment for his release detection system.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and

(8d), orders Mr. Goger and Mr. Goger agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Mr. Goger shall perform the actions described in Appendix A to the Order.
2. For the above-cited violations, Mr. Goger owes a civil charge of \$4,827.00. However, Mr. Goger submitted financial information to DEQ documenting his inability to pay civil charges above and beyond the cost of returning to compliance. The civil charge will therefore not be assessed.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Goger, for good cause shown by Mr. Goger, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Mr. Goger admits the jurisdictional allegations in the Order.
4. Mr. Goger consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Goger declares he has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Mr. Goger to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Goger shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Goger must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Goger shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Goger intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Goger. Notwithstanding the foregoing, Mr. Goger agrees to be bound by any compliance date, which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Mr. Goger petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Mr. Goger has satisfied all the requirements of the Order is a Acase decision within the meaning of the Virginia Administrative Process Act; or
- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Mr. Goger.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Goger from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Goger voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Goger:

Date: _____ By: _____

Myles J. Goger

Title: President

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

Mr. Myles J. Goger.

Date
My commission expires:

Notary Public

Appendix A
Mr. Myles J. Goger d/b/a James River Country Store
UST Facility at 280 Valley Street, Scottsville, VA

- A. By March 1, 2003, Mr. Goger shall have begun performing a valid method of release detection on all USTs.
- B. By March 31, 2003, Mr. Goger shall submit copies of valid passing release detection records for all USTs for March 2003.
- C. By April 30, 2003, Mr. Goger shall submit copies of valid passing release detection records for all USTs for April 2003.
- D. By May 31, 2003, Mr. Goger shall submit copies of valid passing release detection records for all USTs for May 2003.